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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/565,857

01/25/2006

Byoung-il Kang

NEK-0014

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23413 7590 01/25/2010  
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EXAMINER

TESKIN, FRED M

ART UNIT

PAPER NUMBER

1796

NOTIFICATION DATE

DELIVERY MODE

01/25/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

usptopatentmail@cantorcolburn.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/565,857	<b>Applicant(s)</b> KANG ET AL.	
	<b>Examiner</b> Fred M. Teskin	<b>Art Unit</b> 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 October 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,6,8 and 9 is/are rejected.
- 7) ☐ Claim(s) 3,4,7 and 10 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

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**Detailed Action**

This Office action follows a reply filed on 10/29/2009. Per the reply, claim 1 has been amended and claim 5 has been cancelled. Claims 1-4 and 6-10 are currently pending and under examination herein.

Applicants' arguments with respect to claim 1, as amended, have been fully considered and are persuasive. Therefore, the prior art rejections based on Minematsu et al and either of JP 3-095252 and JP 4-353552 have been withdrawn. However, upon further consideration a new ground of rejection is made based upon newly discovered prior art of JP 6456762.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 6, 8 and 9 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over JP 6456762 (all references thereto being to the corresponding English language translation furnished herewith).

Thermoplastic resin compositions meeting the compositional limitations of the rejected claims have been described by JP '762, see Table 1, Example No. 1; Table 3, Examples 8-9 and Table 4, Example Nos. 10-12. Considering in particular Example No. 1, it is noted the described composition comprises 30 parts by weight of A-1, 66 parts by weight of A-i, 2 parts by weight of each of B-1 and C-1. Being respectively described as a rubber-reinforced graft copolymer and an acrylonitrile-styrene copolymer (see pages 18-19), A-1 and A-i are seen to correspond to applicants' (A) and (B) as claimed. Further, B-1 comprises copolymerized ethylene and glycidyl methacrylate (see page 21, lines 4-5) and as such, corresponds to applicants' (C) where the olefin forming main chain is ethylene; and C-1 refers to a copolymer of acrylonitrile, styrene and methacrylic acid (30/65/5 parts; see page 21). Based on the stated quantity of methacrylic acid and complete polymerization conditions (by aging for 3 h. per Referential Example 3; see *Id.*, final full paragraph), C-1 is considered to intrinsically possess a number of carboxyl groups per molecule requisite to applicants' (D) as per claims 1 and 8.

Regarding claim 2: Example 11 (Table 4) of JP '762 describes a composition comprising 5 parts by weight of B-1 together with 2 parts by weight of C-1 and which otherwise meets the compositional limitations of the claim.

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Regarding claim 9: in at least Example 1 of JP '762, the described composition comprises 2 parts by weight of each of B-1 and C-1, equating to a ratio within the claimed range.

As to the "low-gloss" property in claim 1, examiner acknowledges that this property improvement may not be explicitly disclosed by JP '762. However, the references teach all of the claimed compositional components. Therefore, the claimed improvement would be implicitly achieved by the disclosed compositions with all the claimed components. Where the prior art teaches the identical chemical composition as claimed, the properties applicants disclose and/or claim are necessarily present therein. *In Spada*, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990). If it is applicants' position that this would not be the case: (1) evidence would need to be provided to support the applicants' position and (2) it would be the Office's position that there is no adequate teaching as to how to obtain the claimed gloss reduction with only the claimed components.

Claims 3, 4, 7 and 10 are objected to as being dependent on a rejected base claim, but would be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claim. The limitations of said claims are not found in the prior art in a context that would render the overall composition claimed anticipated or obvious to a person having ordinary skill in the art.

In view of the new grounds of rejection, this action is made non-final.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner F. M. Teskin whose telephone number is (571) 272-1116. The examiner can normally be reached on Monday through Thursday from 7:00 AM - 4:30 PM, and can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu, can be reached on (571) 272-1114. The appropriate fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Fred M Teskin/

Primary Examiner, Art Unit 1796

FMTeskin/01-16-10